

### **REMARKS**

Claims 26-51 are now pending in the application. Claims 1-25 have been cancelled and Claims 26-51 have been added. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

### **REJECTION UNDER 35 U.S.C. § 112**

Claims 15-16 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point and distinctly claim the subject matter which Applicant regards as the invention. This rejection is respectfully traversed.

Applicant has cancelled Claims 15 and 16. Therefore, Applicant believes the rejection of these claims has been rendered moot.

### **REJECTION UNDER 35 U.S.C. §§ 102 AND 103**

Claims 1-7, 11-12, 14-15, and 17-22 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Herzer (U.S. Pat. No. 3,506,306, hereinafter "Herzer"). Claims 1-2, 7, 10-13, 17-18, 22, and 25 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Terada (U.S. Pat. No. 4,304,439, hereinafter "Terada"). Claims 1-2, 7, 10-13, 17-18, 22, and 25 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Hattori (U.S. Pat. No. 4,351,563, hereinafter "Hattori"). Claim 16 stands rejected over Herzer in view of Hattori. These rejections are respectfully traversed.

Applicant has cancelled Claims 1-25. As such, Applicant believes that these rejections have been rendered moot.

### **ALLOWABLE SUBJECT MATTER**

The Examiner states that Claims 8, 9, 23 and 24 would be allowable if rewritten in independent form. Applicant has cancelled Claims 1-25. However, Applicant has generally rewritten Claims 8 and 23 as new Claims 48 and 50.

### **NEW CLAIMS**

Applicant has added new Claims 26-51. No new matter has been added.

At the outset, Applicant notes that new Claim 26 recites the feature of “an actuation handle fixedly attached to said cross member and operable to transmit an applied force to said second housing via said cross member.” New Claim 36 recites “an actuation handle fixedly attached to said cross member and operable to transmit an applied force to said second housing via said cross member.” New Claim 41 recites “an actuation handle fixedly attached to said cross member, said actuation handle operable to transmit an applied force to said second housing via said cross member.” Herzer fails to include an actuation handle, specifically stating that the headrest has “lockable adjusting means having no exposed operating members” (col. 1, lines 43-44). Thus, Applicant believes that Claims 26, 36 and 41 are novel over the cited prior art.

Applicant notes that new Claims 26, 36 and 41 also include “a spring axially biasing said second housing relative to said first housing.” In Terada, a coil spring appears to be used to provide rotational resistance. The present invention employs a spring providing an axial force to bias the first housing relative to the second. New Claims 26, 36 and 41 also differ from Hattori, which describes the “[p]awl portion of the of the pawl lever is continuously urged by the spring so as to engage one portion of the

recessed portion of the latch hole of the side bracket” (col. 2, lines 34-37). The present invention uses a spring to axially bias the second housing relative to the first housing, rather than forcing the handle against one of the housings as a means of engagement. As such, new Claims 26, 36 and 41 are novel over the prior art cited by the Examiner.

Applicant notes that Claims 27-35 depend from Claim 26, Claims 37-40 depend from Claim 36, and Claims 42-47 depend from Claim 41. As such, these claims define over the prior art for the reasons set forth regarding Claims 26, 36 and 41.

The Examiner has objected to Claims 8, 9, 23 and 24 as allowable if written in independent form. Applicant has added Claims 48 and 50, generally describing the invention of Claims 8 and 23. Applicant also notes that Claim 49 depends from Claim 48 and Claim 51 depends from Claim 50. As such, these dependent claims should be in condition for allowance.

#### **OBVIOUSNESS REJECTION**

The Examiner has previously rejected Claim 16 over Herzer in view of Hattori. The Examiner claims that it would be obvious to combine the handle disclosed in Hattori with the headrest disclosed in Herzer. However, Herzer specifically disclaims the use of a handle by describing the invention as “a headrest with lockable adjusting means having no exposed operating member.” It is established that where references, instead of suggesting the invention, seek or warn to avoid the suggestion, such references diverge from and teach away from the invention at hand and it is error to find obviousness based on such references. In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1599 (Fed. Cir. 1988) (citing W. L. Gore & Assocs. v. Garlock, Inc., 721 F.2d

1540, 1550, 220 USPQ2d 303, 311 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984)).

Therefore, Applicant believes that the modification of Herzer proposed by the Examiner in the Office Action is not valid against any of the pending claims because providing Herzer with an actuation handle contradicts the teaching of Herzer.

#### **CONCLUSION**

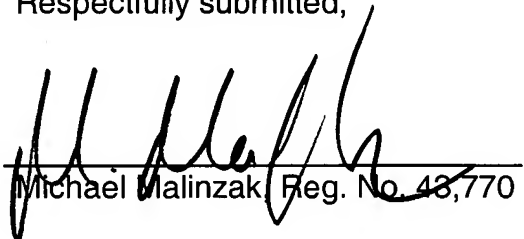
It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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